

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 20, 2018 appellant, then a 59-year-old administrative assistant, filed an occupational disease claim (Form CA-2) alleging that she developed pneumonia with right lung septic pneumonia due to factors of her federal employment which she indicated occurred after working in smoke from a forest fire and around coworkers who were sick and coughing. She noted that she first became aware of her condition and its relationship to factors of her federal employment on January 5, 2018. Appellant did not stop work.

In a March 5, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate letter, OWCP requested the employing establishment to respond to the accuracy of appellant's claim and to supply any additional information surrounding the forest fire. It afforded both parties 30 days to submit the requested factual and medical evidence.

OWCP received Mee Memorial Hospital records noting that appellant was admitted on January 6, 2018 for a fever and flu-like symptoms. A history and physical summary indicated that appellant reported five days of general malaise, low-grade fever, and shortness of breath. Laboratory and diagnostic test results were summarized. A computerized tomography (CT) scan dated January 6, 2018 noted findings including mild right pleural effusion, and pulmonary mass vs. fluid within the minor fissure region. A discharge summary dated January 7, 2018 indicated that appellant was discharged with a number of diagnoses including congestive heart failure and questionable pneumonia.

Medical records from the Salinas Valley Memorial Hospital note that appellant was hospitalized on January 9, 2018 for an admitting diagnosis of pneumonia and discharged on January 18, 2018 with a diagnosis of chronic respiratory failure secondary to parapneumonic effusions. Numerous diagnostic reports from this hospitalization were submitted to the record.

Additional records from the Mee Memorial Hospital dated February 5, 2018 note that appellant was admitted again for shortness of breath and general malaise. Appellant had indicated that she was to return to work that morning, but felt too weak and unwell. A diagnosis of possible recurrent pneumonia was noted.

A February 5, 2018 emergency room (ER) order summary from the Salinas Valley Memorial Hospital, noted that appellant had been sent to the ER from Mee Memorial Hospital following complaints of trouble breathing and chest x-rays which showed fluid on her lungs. Appellant had been admitted to the hospital following a diagnosis of pneumonia.

In a February 9, 2018 Salinas Valley Memorial Hospital operative report, Dr. Neil D. Rudo, a Board-certified surgeon and vascular surgeon, diagnosed acute empyema and noted that appellant had undergone a right thoracotomy with decortication.

In a March 8, 2018 statement, appellant alleged that a virus she contracted while working on a forest fire developed into sepsis pneumonia. She indicated that she worked in close proximity to a number of sick people while assigned to her fire assignment dispatch for two weeks. Appellant noted that the desks in the trailer were placed close together, she was fine when starting the assignment, and “deathly sick” after 14 days.

OWCP received numerous additional medical records from Salinas Valley Memorial Hospital including nursing, consultation, and diagnostic records relating to her hospitalization from February 5 to 20, 2018. Additional diagnostic testing, including a February 6, 2018 CT scan report of appellant’s lungs, found possible right-sided pleural effusion, a February 7, 2018 ultrasound report with findings of recurrent right pleural effusion, and February 13, 2018 vascular report diagnosing right basilica vein occlusive thrombus with no evidence of right upper extremity deep venous thrombosis.

A February 20, 2018 summary discharge report related that appellant was initially admitted for shortness of breath and chest pain. Appellant was diagnosed with empyema and she underwent a right thoracotomy and decortication. She was evaluated for a suspicious appearing structure on the aortic valve, which was not confirmed. The Salinas Valley Hospital records included numerous other documents relating to diagnostic tests.

On May 18 2018 the employing establishment’s District Ranger, T.S., submitted a May 17, 2018 letter in response to OWCP’s request for additional information. T.S. replied that appellant’s “relative to this claim appear accurate”; that although there were no known or harmful substances, appellant was exposed to “atmospheric smoke”; that she was “also exposed to other sick people in her workplace before becoming ill herself”; and that no air samples are available.

By decision dated August 15, 2018, OWCP denied appellant’s occupational disease claim, finding the medical evidence of record insufficient to establish that her diagnosed sepsis pneumonia was causally related to the accepted factors of her federal employment.

Subsequent to the denial of her claim, appellant resubmitted medical records from Mee Memorial Hospital pertaining to her January 6, 2018 hospitalization.

On September 28, 2018 appellant requested reconsideration.

By decision dated October 30, 2018, OWCP denied appellant’s request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant filed a timely request for reconsideration on September 28, 2018. Appellant did not show in her request for reconsideration that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered by OWCP. Consequently, the Board finds that she was not entitled to a review of the merits based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

³ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *D.B.*, Docket No. 19-1963 (issued July 1, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

Appellant also failed to submit relevant and pertinent new evidence in support of her September 28, 2018 request for reconsideration. The underlying issue on reconsideration was whether appellant had met her burden of proof to establish that her medical condition was causally related to the accepted factors of her federal employment. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹

While appellant resubmitted copies of Mee Memorial Hospital report pertaining to her January 6, 2018 hospitalization, the Board has long held that evidence that repeats or duplicates evidence already of record, or is cumulative in nature, has no evidentiary value, and does not constitute a basis for reopening a case.¹⁰ As appellant failed to provide relevant and pertinent new evidence related to the underlying issue of causal relationship, she was not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹¹

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁹ *B.O.*, Docket No. 20-0156 (issued May 13, 2020); *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

¹⁰ *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018).

¹¹ *D.M.*, *id.*; *C.C.*, Docket No. 18-0316 (issued March 14, 2019); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board